IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11706 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VEPARI (KASAI) YUSUFBHAI RAHEMANBHAI

Versus

DIST MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR SAMIR J DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/02/2001

ORAL JUDGEMENT

#. This is another case in the series today wherefrom it is clearly borne out that this detention order is nothing but only a matter of statistical data otherwise lacunae are being left in the order by the detaining authority so that it may be easy for the petitioner detenu to get

himself released from the Court. Not only this, at this level also, the respondents are supporting the petitioner which is clearly borne out from the fact that nobody has cared or bothered to file reply to the special civil application.

#. This petition was admitted on 20th November, 2000, and if the respondents were really desirous of filing reply they had more than sufficient time. Then comes the third stage where the State of Gujarat has not cared to give file of the matter to the Government advocate.

#. Manifold contentions have been raised by the learned counsel for the petitioner challenging the order of detention of the petitioner but as this petition deserves to be allowed only on one ground, it is not necessary to deal with all those contentions.

#. In para-11 of the special civil application, the petitioner averred:

"The petitioner further submits that the detaining authority has not considered the important relevant materials as per chargesheet counter of the Criminal cases/offences, those mentioned in the grounds of detention i.e. statement of witnesses, A.S.I. Mr.. Punambhai Vaghjibhai, Mr. Sureshkumar Gangaram, P.C. Mr. Baldevbhai Bhurabhai, P.C. Mr. Saluji Mangalaji, A.S.I. Mr. Prabhatsin Pruthavsinh, P.C. Mr. Ravindra Baburao, P.C. Mr. Baburao Sartanbhai, Witness Mr. Mandanbhai Maljibhai Rabari, Mr. Gabhabhai Merajbhai Rabari, Mr. Baldevbhai Maljibhai Rabari in respect of C.R. No.34/2000, witness P.C. Mr. Amratlal Madhavlal, Mr. Udesinh Fatesinh, witness Mr. Mansuri Mohmadbhai Rajabbhai, Khokhar Maheboobkhan Mehtabkhan and Mr. Parmar Yusufbhai Rahemanbhai, Mr. Pathan Mehboobkhan Aflatkhan, Mr. Vepari Yusuf Rahemanbhai I.O., P.S.I. Mr. H.B. Vala in respect of C.R. No.204/2000.

The petitioner further submits that detaining authority has failed to consider the said important relevant materials and vital documents as the said materials are not placed before him by the sponsoring authority. Therefore, the subjective satisfaction arrived at to pass the order of detention is not genuine and it is vitiated.

The petitioner further submits that he is also not supplied the aforesaid material, important relevant material and vital documents, statements of the witnesses, referred as above in respect of C.R. No.34/2000 and C.R. No.204/2000. Therefore, the

petitioner could not make the effective representation to the State Government, detaining authority and also to the Advisory Board, and his valuable right under Article 22(5) of the Constitution of India is violated. Thus, his continued detention has become illegal."

#. These factual averments made by the petitioner stand uncontroverted and as such the same are to be taken to be correct and as a result of which, it is a case where the petitioner has been deprived of his valuable right of making effective representation as conferred upon him under Article 22 (5) of the Constitution of India.

#. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 4-9-2000 is quashed and set aside. The petitioner Vepari (Kasai) Yusufbhai Rahemanbhai, detenu, at present in Baroda Central Jail, Baroda be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

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